

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 96-786

March 11, 1998

CENTRAL MAINE POWER COMPANY
Petition for Approval to
Furnish Gas Service In and
To Areas not Currently
Receiving Natural Gas Service

ORDER

Welch, Chairman; NUGENT and HUNT, Commissioners

I. SUMMARY OF ORDER

We grant Central Maine Power Company (CMP), on behalf of its joint venture with New York State Electric and Gas (NYSEG), conditional authority to serve within the 60 cities and towns listed below. We require CMP, or the joint venture once formed, to file additional information regarding its proposal, including detailed financial, resource and rate plans, for our review and approval before it will be fully authorized to begin construction and provide service in any of these municipalities. Finally, CMP and the joint venture must also obtain other necessary approvals including those pursuant to sections 707, 708, 902, and 1101.

II. PROCEDURAL HISTORY

On December 20, 1996, CMP filed a petition for approval to furnish natural gas service in 60 municipalities that may be served from the Maritimes & Northeast Pipeline (MNE) or Portland Natural Gas Transmission System (PNGTS) including Rumford, Mexico, Dixfield, Bethel, Farmington, Wilton, Jay, Livermore, Livermore Falls, Millinocket, East Millinocket, Medway, Lincoln, Howland, Orono, Old Town, Milford, Veazie, Bangor, Brewer, Hampden, Orrington, Bucksport, Clinton, Waterville, Winslow, Fairfield, Madison, Oakland, Skowhegan, Norridgewock, Augusta, Gardiner, Randolph, Hallowell, Farmingdale, Manchester, Winthrop, Topsham, Brunswick, Bath, Freeport, and Yarmouth. With its direct testimony, filed on October 31, 1997, CMP amended this list to include Baileyville(Woodland), Bridgton, Casco, Durham, Gray, Harrison, Naples, North Yarmouth, Norway, Otisfield, Oxford, Paris, Pownal, Raymond, Standish, and Windham.

A prehearing conference was held on March 5, 1997 at which the Hearing Examiner granted the petitions to intervene of the

Office of the Public Advocate (OPA), Mid-Maine Gas Utilities, Inc. (MMGU), the Town of Jay, the Industrial Energy Consumer Group (IECG), and Northern Utilities, Inc. (NU) The Examiner deferred ruling on the petitions of the Maine Council - Atlantic Salmon Federation (ASF), MNE, Madison Electric Works (MEW), and the Town of Cumberland, all of which did not appear at the prehearing conference. The list of parties now includes ASF and MNE.

By Procedural Order dated March 12, 1997, the parties were invited to comment by March 26, 1997 on a threshold question as to whether it would serve the public interest to allow an electric utility to also provide gas service.¹ An Examiner's Report on the threshold issue was issued on August 25, 1997. The Commission issued its Interim Order on September 26, 1997 holding that CMP's application to provide gas service could be processed in accordance with the standards of approval delineated in Docket No. 96-465 and that CMP would be permitted to provide gas service only through a separate corporate subsidiary.

On October 27, 1997, CMP filed a proposed schedule for the remainder of the proceeding to which several parties had indicated no objection. On October 28, 1997 CMP filed a Motion for Protective Order to allow it to limit distribution to only Staff and the Public Advocate of certain market analyses and confidential business strategy information. On October 29, 1997, the IECG filed an objection to CMP's request to limit distribution to Staff and OPA. On November 25, 1997, the Hearing Examiners granted the protective order and established a schedule for the proceeding including a case management conference and hearings on January 26, 28, and 29. CMP filed its Direct Testimony and Exhibits on October 31, 1997. CMP filed Confidential Exhibit QKE-6 pursuant to protective order on November 26, 1997.

The Examiner issued Protective Order No. 1 on December 5, 1997. The IECG filed a Motion for Reconsideration with Incorporated Memorandum of Law on December 15, 1997. CMP filed its response on December 23, 1997. The Examiners denied the IECG's motion for reconsideration by Procedural Order dated December 30, 1997.

¹ On June 27, 1997, the Examiners assigned to this and three other natural gas dockets (97-177, 97-267, 97-310) issued a Notice of Temporary Suspension of these cases to allow the Commission to conduct a generic inquiry (Docket No. 97-267) into the development of the natural gas industry in Maine. This had the effect of suspending this case for a few months. The order closing that docket and summarizing its findings was issued February 17, 1998.

The Maine Oil Dealers Association (MODA) and Bangor Gas Company, L.L.C.'s (Bangor Gas) late-filed petitions to intervene were granted by Procedural Order on December 24, 1997 on condition that they "take the case as they find it". MODA's intervention is limited to providing information concerning gas and oil pricing, environmental comparisons, or conversion costs and data at this stage of the proceeding.

None of the intervenors filed testimony in this proceeding.

The Examiners issued a Procedural Order on January 23, 1998 requiring parties to provide a written list of issues and witnesses for cross-examination as well as exhibits that any party wished to offer into evidence at the hearings scheduled for January 28th and 29th. On January 26, 1998, the Examiner held a Case Management Conference at which CMP presented a draft stipulation supported by CMP, the Public Advocate, and MNE. Northern Utilities indicated that it would take no position on the stipulation.

Also on January 26, 1998, Bangor Gas filed a Motion to Compel Responses to Data Requests it had issued on December 31, 1997. CMP objected, first in writing on January 21, 1998, and again at the conference, on the basis that Bangor had filed its data requests well after the discovery deadline that had been established in this case. Bangor Gas argued that that the public interest required that CMP provide responses to its requests and sought to obtain responses to its discovery through cross-examination at hearing. Bangor Gas also argued that CMP does not have standing to obtain conditional authority because CMP will not be the serving entity. No other party submitted areas for cross-examination of CMP's witnesses.

On January 27, 1998, by Procedural Order, the Examiners denied Bangor Gas' motion to compel, overruled Bangor Gas' stated objection to CMP's application, and canceled the scheduled hearings.² That order also allowed written comment by the parties on the proposed stipulation by February 4th and established that an Examiners' Report would be issued by February 18, 1998.³ The executed stipulation was filed on February 3, 1998. Objections to the stipulation and to the application were filed by IECG and Bangor Gas.

² The Examiners ruled that Bangor Gas sought discovery both after the deadline in the case and which pertained more properly to a "Phase II" stage of review for full authority or in a reorganization and affiliated interest proceeding.

³ The Examiners later extended this date to February 20th.

On February 12, 1998, CMP filed a letter informing the Commission that it would file its "Phase II" application on or before February 23, 1998, in advance of receiving its Phase I approval. CMP subsequently made its Phase II filing and requested that the Commission implement an expeditious schedule to consider its case. An Examiners' Report was issued on February 20, 1998. Northern, IECG and Bangor Gas filed exceptions. Deliberations were held on March 9, 1998.

III. Standards of Review

A. Nature of Review

We have before us for review both an application for conditional authority to serve 60 cities and towns throughout Maine and a contested stipulation proposing that the Commission award CMP a conditional certificate in this proceeding. The OPA, MNE, and CMP support the stipulation. Bangor Gas and IECG contest the stipulation as well as CMP's application for conditional service authority. Northern neither supports nor opposes the stipulation. The remaining intervenor, MMGU, has not commented on either the stipulation or CMP's application.

In its February 4th letter, IECG requests that the Hearing Examiners reject the stipulation "which contains only conclusory statements with regard to the financial and technical ability" of CMP in its association with NYSEG. IECG requested that the Examiners independently review and evaluate the information presented in this case.

As we have recognized in prior orders, we have an obligation to review a proposed stipulation to determine whether the overall stipulated result is consistent with the public interest. See *Northern Utilities, Inc., Proposed Environmental Response Cost Recovery*, Docket No. 96-678, *Order Approving Stipulation* (MPUC April 28, 1997). Consequently, we will review CMP's application for conditional authority on the merits of the case as it has been developed in this record.⁴

⁴ Based on the findings as a result of our review of the merits of CMP's application, a review of the stipulation is unnecessary.

B. Hearing Request

CMP's application for a conditional authority to serve 60 towns and cities throughout the state of Maine is governed by 35-A M.R.S.A. §2104 and 2105. The application of those statutory sections was discussed in some detail in our Order in *Mid-Maine Gas Utilities Inc., Request for Approval to Furnish Gas Service*, Docket No. 96-465 (March 7, 1997) (*Mid Maine*). In order to receive service authority, parties appearing before the Commission must demonstrate, and the Commission must find, that the grant of authority to a second utility serves the public convenience and necessity and will promote, "safe, reasonable, and adequate service at rates which are just and reasonable to customers and public utilities." 35-A M.R.S.A. § 101.

In its letter of February 4th, the IECG objected to the cancellation of hearings in this case arguing that section 2105 requires that the Commission hold a hearing before it may grant service authorization to any gas utility "in a municipality where there is in operation a public utility engaged in similar service or authorized to provide similar service." See 35-A M.R.S.A. §2105(1). Subsection 2 requires that we make a declaration "after public hearing of all parties interested, that public convenience and necessity require a 2nd public utility." Because of the timing of CMP's application, it is the second (conditional or unconditional) applicant for service authority in those areas in which it proposes to serve.⁵

Hearings were scheduled in this proceeding for the purpose enumerated in section 2105 as well as to address any other relevant issues, such as the proposed venture's financial or technical capability. However, neither the IECG nor any other party except Bangor Gas, indicated any desire to cross-examine any of CMP's witnesses or to submit evidence into the record.⁶ The purpose of holding a hearing is to allow parties and the Commission and Staff to cross-examine witnesses and to develop an adequate record for the case. Given the documentary evidence

⁵ In *Northern Utilities Inc., Re: Petition for Consent to Furnish Natural Gas Service in and to Any City or Town of the State of Maine*, #U. 2782 (MPUC June 27, 1969), the Commission authorized Northern Utilities to serve all areas of the state except Bangor, Brewer, Old Town, Orono and Veazie. The Commission granted conditional authority to Mid-Maine Gas Utilities, Inc. in Docket No. 96-465, by Order dated March 7, 1997, to serve in the latter five municipalities.

⁶ The IECG did not otherwise indicate an interest in hearings on CMP's application or raise any issues until its letter of February 4th.

already filed, neither the Advisory Staff nor the Commission required a hearing. Thus, after Bangor Gas's cross-examination was ruled out, there was nothing further raised by the parties that required additional evidence at a hearing. Consequently, the scheduled hearings were canceled.

Despite objecting to the cancellation, the IECG did not raise any matters that it wished to address at hearing, and, in fact, did not even attend the case management conference or avail itself of the scheduled opportunities in the case to bring any such matters to the attention of the Examiners. Consequently, its objection to the cancellation of the scheduled hearings rings hollow. Nor do we interpret the statute as requiring us to conduct a hearing if there is clearly no purpose to doing so, i.e. all parties having had the opportunity to indicate their wish to participate but none has done so or raised issues of fact requiring a hearing at this time. See January 27th Procedural Order.

C. CMP's Standing to Apply for and Receive Conditional Authority to Serve

Both IECG and Bangor Gas argue that CMP is not the appropriate entity to seek or receive conditional authority from the Commission because it is not the entity that, in fact, will be providing service. CMP must form a subsidiary to conduct gas business. See Interim Order, September 26, 1997. Bangor Gas argues that CMP may not be a "place holder" for the new venture, that the new venture will have to itself apply once it is finally organized.

We disagree. The statute provides the Commission broad powers with which to regulate utilities in a manner that ensures the safe, adequate provision of utility service at just and reasonable rates. See 35-A M.R.S.A. §§104, 301. In the absence of explicit statutory parameters, the Commission has ample authority to determine the process by which it will oversee the formation and regulation of new and exiting gas utilities.

In *Mid-Maine Gas Utilities Inc., Request for Approval to Furnish Service*, Docket No. 96-465, (March 7, 1997) (*Mid-Maine*), the Commission granted the requested section 2104 authorization to provide service, but conditioned authorization upon further review of MMGU's project financing, construction, and gas supply plans prior to initiation of service. We did so recognizing that the creation of a brand new natural gas distribution system infrastructure as opposed to the gradual expansion and growth of an existing system may pose problems which can be best addressed in an iterative manner. It is perhaps for this reason that both CMP and MMGU have requested

issuance of a "conditional certificate of service". In this case, CMP seeks the same treatment as MMGU, that it be given conditional authority to furnish gas service in areas of the State not currently receiving gas service. The goal of any Commission review, whether iterative -- as in instances of grants of conditional authority -- or otherwise, remains the same.

The Commission has afforded review to nascent subsidiaries upon application of the parent corporation, as circumstances warrant. It is more important that Commission process ensure the legal standards contained in 35-A M.R.S.A. §301 are met, and that the Commission's processes do not unduly delay developing ventures than that it adhere to overly formalistic requirements that are not dispositive of the end product. This stage of approval is preliminary. The Commission will have several more opportunities to address the issues of concern to IECG and Bangor Gas in future proceedings that will be necessary before CMP may be awarded full authority. These include proceedings for sections 707, 708, 1101, and "Phase II" (for full or "unconditional" authority) reviews.

In Docket No. 98-077, CMP seeks section 707, 708, and 1101 approvals to establish a gas utility affiliate. Also, in *Central Maine Power Company, Application for Approval of Reorganizations, of Transactions with Affiliated Interests, and Transfer of Assets*, CMP is currently proposing to reorganize into a holding company structure. These proceedings provide the Commission with ample opportunity to review the structural aspects of the new corporate entity. In our "Phase II" review of CMP's (or the affiliated entity's) application for full authority, we will explore the gas proposal in greater detail.

Consequently, while a grant to CMP of preliminary, conditional authority on behalf of its proposed joint venture with NYSEG, as outlined in this case, is sufficiently supported at this stage of the process, we agree with Bangor Gas and IECG that additional details about the management, financing, resource, and service plans of the new venture will be necessary before we grant full authority.

III. CONSIDERATION OF THE MERITS OF CMP'S APPLICATION FOR CONDITIONAL AUTHORITY

A. Description of the CMP Application

CMP's filing was supported by the testimonies of Darrel R. Quimby of CMP, and Tim D. Kelley and Michael D. Eastman of NYSEG. Mr. Quimby described Central Maine Power Company's involvement in bringing natural gas to Maine, its experience with funding projects of similar size and complexity, and the proposed

corporate structure of the local distribution company (LDC). Mr. Kelley described NYSEG's expertise in developing and operating new franchises in New York State and its commitment to developing an LDC in Maine jointly with CMP. Mr. Eastman explained NYSEG's experience and capabilities to engineer, design, construct, operate and maintain safe and reliable natural gas transmission and distribution facilities for the benefit of the joint venture in Maine.

In its petition CMP states that, as Maine's largest electric utility, it can take advantage of its complementary knowledge, expertise, and financial, technical, management, and human resources to develop and operate a natural gas distribution system in Maine. CMP states that operating a gas LDC "would serve CMP's goal of transforming from an electricity-only supplier to a complete energy service supplier in an expanded competitive market." *Petition at p.3.* CMP notes that, as Maine's largest electric utility with operating revenues exceeding \$900 million and property in service valued at more than \$1 billion, it has demonstrated financial capability to attract capital. Moreover, CMP states it is "thoroughly familiar with capital markets and all aspects of utility financing." Additionally, CMP notes that it has extensive knowledge of federal, state and local environmental laws and other siting and permitting laws, as well as the PUC's rules and regulations.

CMP publically announced its affiliation with NYSEG in the fall of 1997. Its filing describes the joint venture that the two corporate entities are proposing to provide service to 60 currently unserved municipalities in Maine. The joint effort by CMP and NYSEG more than meets the three prong test of need, financial capability, and technical capability set in the *Mid-Maine* proceeding.

In *Mid-Maine*, we concluded that need exists where there is no service being provided. Though other companies are already authorized to provide service in much of the area CMP/NYSEG request to serve, the petitioners have relied on the fact that service is not currently being provided as a demonstration of need. Considering the lack of active construction, physical distribution infrastructure, or service in the communities the applicants wish to serve, this adequately shows a need for gas service for purposes of granting conditional service authority. We may revisit this criterion when reviewing an application for unconditional service authority.

The testimonies of witnesses Quimby and Kelley describe not only one, but two corporate entities that have a demonstrated ability to finance and construct projects of similar cost and technical complexity. In addition, the financial analyses

contained in Confidential Exhibit QKE-6, along with responses to discovery requests of the OPA⁷, show that the applicants have made reasonable assumptions and given serious consideration to providing natural gas distribution service in the communities for which a certificate is requested. In addition, these financial analyses demonstrate that this applicant will be able to serve Maine consumers at reasonable rates.

Mr. Eastman's testimony describes NYSEG's technical capabilities in developing and operating geographically dispersed gas distribution companies. Mr. Eastman's direct testimony and attached resume provide a more than adequate demonstration that the applicants have the technical wherewithal to provide safe and reliable service to Maine residents

CMP itself clearly has extensive experience in planning, funding, supervising, operating, and maintaining local distribution systems relating to electric public utility service to date. This experience, along with its familiarity with federal, state, and local regulatory requirements, will be valuable in its application to the development of a natural gas distribution utility. Combined with NYSEG, an enterprise already devoted to natural gas system endeavors, the two provide a sufficient degree of expertise and experience to satisfy us that they may reasonably be awarded a conditional authority to serve in the locations for which they have applied.

B. Objections to CMP's Application

Bangor Gas contends that CMP's application is premature and should be denied for the following reasons:

1) the joint venture between CMP and NYSEG has not been fully developed, reduced to contract, or approved making it unclear what final form the venture will take and, even, whether the resulting entity will, in fact, resemble the presentation made to date in this proceeding;

2) there is insufficient detail present in CMP's application to meaningfully assess the financial or technical capability of the proposed venture; and

3) because CMP is not the legal entity that will be providing gas service, it has no standing and cannot be awarded authority as a "place holder."

The IECG echoes these concerns.

⁷ See CMP's Responses to OPA's First Data Request, Nos. 4, 6, 7, 8, 9, 10, 22, and 40.

We agree that there is a substantial amount of detail remaining before a joint venture as described by CMP in this application may be finally authorized to provide service in Maine. However, we conclude that a joint venture between these two entities would have sufficient financial and technical capability to develop a natural gas utility to serve Maine and may, therefore, be granted conditional authority under the standards established in *Mid-Maine*. The information and analysis provided by CMP pursuant to protective order adequately demonstrate that those responsible to date for the joint venture have realistically assessed the costs of doing so in numerous areas in the state and that, under this assessment, could provide safe and adequate service at just and reasonable rates. We, therefore, find that the evidence provided by CMP about its joint venture with NYSEG supplies sufficient information for us to determine that a grant of conditional authority is warranted.

We do, however, also find that more information will be required before we will grant any such venture full, or unconditional, authority. As with MMGU, before we grant full authority we will require more explicit information with regard to the venture's financial plans, more detailed engineering and construction plans, and its final resource plan.⁸ This additional information will be subject to scrutiny by parties and the Commission and will be the subject of hearings as may be warranted.

Moreover, as noted in the proposed stipulation, the gas venture must be formed and approved pursuant to sections 707, 708, and 1101. Without those approvals, the joint venture described to date in this docket will not be entitled to go forward. Furthermore, should the venture envisioned and represented by CMP in this proceeding substantially change in form or function, we would expect to CMP to present the application for our review to determine whether the authority remains warranted.

For these reasons, we are persuaded that there will be sufficient opportunity for all interested parties to develop any other public interest issues without need to further burden this proceeding.

V. CONCLUSION

⁸As in *Mid-Maine*, we recognize that it is not possible for proposed LDCs that will depend on the proposed interstate pipelines for supply to determine, in advance of the completion of those projects, its precise supply portfolio. If neither pipeline is built, it is possible that none of the LDC projects now proposed would go forward.

CMP/NYSEG have satisfactorily demonstrated that they are capable of providing safe, reasonable, and adequate service at rates which are just and reasonable to customers and public utilities. For this reason we will grant them the conditional authority to serve which they seek, subject to the following conditions:

1. That CMP form or cause to be formed a subsidiary to be the serving entity;

2. That the serving entity consist of a joint venture substantially the same as that represented to date in this proceeding and that the venture apply to the Commission for a determination that the authority granted herein will apply to that venture;

3. That the serving entity not construct or operate a natural gas system public utility until it receives further authority from the Commission as described in this Order;

4. That the serving entity submit further information regarding the serving entity's proposed financing, construction and resource plans, for review and approval; and

5. That CMP and the serving entity obtain all necessary regulatory approvals pursuant to 35-A M.R.S.A. §§ 707, 708, 902, 1101, or any other law or regulation.

Dated at Augusta, Maine, this 11th day of March, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Hunt